HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 555 of 2005 (SS)

Shekhar Chandra Joshi ..... Petitioner

Versus

1. Uttaranchal Transport Corp.
2. Director General Medical Health, Uttaranchal, Dehradun.
3. Additional Director, Medical Health
4. Additional Director, Medical health & Family Welfare, Kumaun Division, Nainital
5. Chief Medical Officer, Udham Singh Nagar
6. District Laprosy Officer Udham Singh Nagar. ..... Respondents

Mr. M.C. Pandey, Advocate for the petitioner
Standing Counsel, for the respondents.

Dated: 12.5.2005

Hon'ble Mr. Justice Rajesh Tandon J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 27.4.2005 passed by the respondent no.2.

Briefly stated the petitioner is serving as Senior Assistant in District Hospital, Rudrapur. He has submitted that he made a complaint against the respondents before Lokayukt for redressal of his grievances regarding discrimination of his seniority, non payment of his additional salary and passed bills. He submits that the transfer order has been passed by the respondents with mala fide intention and there is no official

exigency of transfer. The respondents are taking charge from him forcibly.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered if the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

It has been held by the Apex Court in the case Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Further the apex Court in State of U.P. v. Goberdhan Lal (2004) 11 SCC 402 has observed as under:

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

It is well settled that the transfer is an exigency of service. However option for the petitioners to approach the higher authorities is available and the petitioners are at liberty to approach the higher authority.

Liberty is, therefore, given to the petitioners to make representation to the appropriate higher authority within 15 days after receipt of the certified copy of this order, who shall decide the same within a month thereafter. The order of transfer shall remain in abeyance for a period of one and a half month only.

With the observations, made above the writ petitions is disposed of. No order as to costs.

12.5.2005 **Rajesh Tandon J.**

Dhyani